

Notice of Allowability

Application No.

10/051,406

Examiner

Andrew Caldwell

Applicant(s)

JENNINGS ET AL.

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to after final amendment filed on 5/23/06.
2. ☒ The allowed claim(s) is/are 1-22 and 110-131.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date Attached.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____



ANDREW CALDWELL

REGISTERED PATENT EXAMINER

EXAMINER'S COMMENTS

In a series of telephone conversations with the Applicants' attorney, James Stipek, Reg. No. 39,388, in July 2006, it became evident that the examiner's amendment to the claims of July 7, 2006 was made without the applicants' authorization. In these conversations, Mr. Stipek presented the basic facts outlined in the letter filed on September 15, 2006, which summarizes the interviews that he held with the examiner formerly assigned to this application. In a telephone interview on July 27, 2006, it was agreed, based on the seriousness of the matter, that a different examiner should be assigned to examine the application and that the application should be withdrawn from issue so actions could be taken to correct the record. As the Supervisory Patent Examiner responsible for the application, I decided to assign the application to myself. Although the letter withdrawing this application from issue was mailed on August 17, 2006, further action on the part of the Office was delayed. This delay was due, in part, to problems with correctly processing the withdrawal from issue using the USPTO's PALM database.

A number of actions must be taken to correct the record. First, the Notice of Allowability and Notice of Allowance mailed July 7, 2006 must be vacated. Second, the Notice of Allowance, the Notice of Allowability, and all supporting papers should be expunged from the record. The Examiner intends to request the Group Director to order these papers expunged. The applicants will be advised of the Group Director's decision in a future communication.

1 When preparing this application for issue, the examiner determined that there
2 was a problem with the applicants' claim for the benefit of prior U.S. applications. On
3 October 29, 2006, the examiner faxed a draft copy of this document to the applicants' in
4 order to obtain their approval for the changes to the specification and the amendments
5 to the claims. The applicants approved the examiner's amendment on November 6,
6 2006.

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10 **Accordingly, the Notice of Allowability and Notice of Allowance mailed on**
11 **July 7, 2006 are hereby VACATED.**

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14 **EXAMINER'S AMENDMENT**

15 An examiner's amendment to the record appears below. Should the changes
16 and/or additions be unacceptable to applicant, an amendment may be filed as provided
17 by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be
18 submitted no later than the payment of the issue fee.

19 Authorization for this examiner's amendment was given in a series of facsimile
20 exchanges with the applicants' attorney, James M. Stipek, Reg. No. 39,388, on October
21 20, 2006 and November 6, 2006.

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Art Unit: 2142

1 In the Specification

2 Please replace paragraph 1 with:

3 [0001] The present application claims the benefit of U.S. Provisional Application
4 Serial No. 60/263,044, filed January 19, 2001, entitled Media Routing Algorithm. The
5 present application is a continuation-in-part of U.S. Patent Application Serial No.
6 09/838,993, filed April 20, 2001, ~~and~~ entitled System and Method for Streaming Media,
7 and now U.S. Patent No. 7,054,949, which is a continuation-in-part of U.S. Patent
8 Application Serial No. 09/766,519, filed January 19, 2001, and entitled System and
9 Method for Streaming Media, now abandoned. ~~and takes priority to U.S. Patent~~
10 ~~Application Serial No. 60/263,044, filed January 19, 2001, entitled Media Routing~~
11 ~~Algorithm, the~~ The contents of which all the aforementioned applications are
12 incorporated herein by reference.

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